

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF TEXAS
3 HOUSTON DIVISION

4 UNITED STATES OF AMERICA . 4:17-CR-0411
5 VERSUS . HOUSTON, TEXAS
6 GEORGE YARBROUGH . SEPTEMBER 8, 2017
7 10:15 A.M.

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9 TRANSCRIPT OF REARRAIGNMENT
10 BEFORE THE HONORABLE MELINDA HARMON
11 UNITED STATES DISTRICT JUDGE

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19 General Order 94-15, United States District Court,
20 Southern District of Texas.

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APPEARANCES

FOR THE GOVERNMENT:

Jennie Basile
Assistant United States Attorney
1000 Louisiana
Suite 2300
Houston, Texas 77002

FOR THE DEFENDANT:

Darryl Austin
Assistant Federal Public Defender
440 Louisiana
Suite 1350
Houston, Texas 77002

OFFICIAL COURT REPORTER:

Mayra Malone, CSR, RMR, CRR
U.S. Courthouse
515 Rusk, Room 8004
Houston, Texas 77002

Proceedings recorded by mechanical stenography. Transcript
produced by computer-aided transcription.

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Mayra Malone, CSR, RMR, CRR

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PROCEEDINGS

THE COURT: The next case is H-17-411, United States versus George Yarbrough.

MS. BASILE: Good morning, Your Honor. Jennie Basile for the United States, Your Honor.

THE COURT: Good morning.

MR. AUSTIN: Good morning, Your Honor. Darryl Austin on behalf of George Yarbrough.

THE COURT: You are Mr. Yarbrough?

THE DEFENDANT: Yes.

THE COURT: It is my understanding that you would like to plead guilty. Is that correct?

THE DEFENDANT: Yes.

THE COURT: Ms. Hawkins, would you swear him in, please?

(Defendant sworn)

THE COURT: Mr. Yarbrough, do you understand you are now under oath and that if you answer any of my questions falsely, your answers may later be used against you in another prosecution for perjury or making a false statement?

THE DEFENDANT: Yes, ma'am.

THE COURT: What is your full name, please?

THE DEFENDANT: George Samuel Yarbrough.

THE COURT: How old are you?

THE DEFENDANT: Forty-six.

1 THE COURT: What is your educational background?

2 THE DEFENDANT: I got my GED in prison.

3 THE COURT: Okay. Have you been treated recently for
4 any mental illness or addiction to narcotic drugs of any kind?

5 THE DEFENDANT: No, ma'am.

6 THE COURT: Are you currently under the influence of
7 any drug or medication or alcoholic beverage of any kind?

8 THE DEFENDANT: No, ma'am.

9 THE COURT: Have you received a copy of the indictment
10 pending against you, that is the written charges that were
11 brought against you in this case?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: And have you discussed the written charges
14 and the case in general with Mr. Austin, your attorney?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: Are you fully satisfied with the counsel,
17 representation and advice given to you in this case by
18 Mr. Austin as your attorney?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: Is there a plea agreement?

21 MS. BASILE: No, Your Honor.

22 THE COURT: Mr. Yarbrough, has anyone made any
23 promises or assurances to you of any kind in an effort to
24 persuade you to plead guilty in this case?

25 THE DEFENDANT: No, ma'am.

1 THE COURT: Has anyone in any way attempted to force
2 you to plead guilty in this case?

3 THE DEFENDANT: No, ma'am.

4 THE COURT: Are you pleading guilty because you are
5 guilty?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: Do you understand that the offense to
8 which you are pleading guilty is a felony offense?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: And that if your plea is accepted, you
11 will be adjudged guilty of that offense?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: And such adjudication may deprive you of
14 valuable civil rights, such as the right to vote, the right to
15 hold public office, the right to serve on a jury and the right
16 to possess firearms?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Are you a U.S. citizen?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: I want to go over with you now the maximum
21 possible statutory penalties you are facing as a result of your
22 plea of guilty this morning. You are pleading guilty to Count
23 One of an indictment that charges you with mailing threatening
24 communications to a United States judge, in violation
25 of 18 United States Code, Section 876(c).

1 The penalty for that crime is imprisonment for up
2 to a maximum of ten years and a fine not to exceed \$250,000.
3 Along with that, there would be supervised release of up to
4 three years. And along with that supervised release, there
5 will be certain conditions of supervised release that you would
6 be obliged to follow. If you failed to follow those, you could
7 be put back in prison for some additional period of time
8 without any credit for the time you have been in prison,
9 without any credit for the time you have been on supervised
10 release, and there would be a \$100 special assessment for the
11 one count that you are pleading guilty to this morning.

12 Do you understand all of those taken together,
13 the prison time, the fine, the supervised release, the
14 conditions of supervised release and the special assessment,
15 those are the maximum possible penalties you are facing as a
16 result of your plea of guilty this morning?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Under the Sentencing Reform Act of 1984,
19 the United States Sentencing Commission has issued guidelines
20 for judges to follow to determine what the sentence will be in
21 a criminal case.

22 Have you and Mr. Austin talked about how the
23 guidelines may apply in your case?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: Do you understand that today I will not be

1 able to tell you what your sentence is?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: And that is because even though the
4 guidelines are no longer mandatory but are advisory, I am still
5 required to consult the guidelines when I determine what a
6 sentence should be in a criminal case. Do you understand that?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: And in order for me to consult the
9 guidelines, I must ask a probation officer to investigate your
10 case and to write a presentence report that will assist me in
11 sentencing. Do you understand that?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: Once that report has been completed, you
14 and Mr. Austin will receive a copy. Ms. Basile, the
15 government's attorney, will receive a copy. And each of you
16 will be given an opportunity to make any objections that you
17 may have to the presentence report. Do you understand that?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: Then we will have a sentencing hearing.
20 At the sentencing hearing, I will rule on any objections that
21 may be made to the presentence report. I will rule on any
22 motions that may be made, any recommendations that may be made
23 or any other matters that might be brought to my attention that
24 might have an impact on the sentence you receive. Do you
25 understand that?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: At the conclusion of the sentencing
3 hearing, I will pronounce sentence. It could be that the
4 sentence I give you is more severe than the one you were
5 expecting when you -- after you and Mr. Austin discussed how
6 the guidelines might apply in your case. Do you understand
7 that?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: If this sentence is more severe than the
10 one you are expecting, do you understand that you will not be
11 given an opportunity to withdraw your plea of guilty?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: Do you also understand that after your
14 guideline range has been determined, the Court would have the
15 authority to depart from the guidelines and to impose a
16 sentence that is either more severe or less severe than the
17 sentence called for by the guidelines?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: And do you understand that in the federal
20 system, parole has been abolished and that you will not be --
21 if you are sentenced to prison, you will not be released on
22 parole?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: Do you also understand that under some
25 circumstances, you or the government would have the right to

10:21 1 appeal any sentence that I impose?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: Do you understand that you have the right
4 to plead not guilty to any offense charged against you?

10:22 5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: And do you understand that if you
7 persisted in a plea of not guilty, you would have the right to
8 a trial by jury or by judge?

9 THE DEFENDANT: Yes, ma'am.

10:22 10 THE COURT: And at that trial, you would have the
11 right to the assistance of counsel in your defense. You would
12 have the right to see and hear all the witnesses and have them
13 cross-examined in your defense. You would have the right on
14 your own part to decline to testify unless you voluntarily
10:22 15 elected to do so in your own defense, and you would have the
16 right to the issuance of subpoenas, compulsory process, to
17 compel the attendance of witnesses to testify in your defense.
18 Do you understand that?

19 THE DEFENDANT: Yes, ma'am.

10:22 20 THE COURT: And do you further understand that at the
21 trial, the jury would be told that they must presume you not
22 guilty of any crime charged against you until such time, if
23 ever, the government brought evidence to them that convinced
24 them, the jury, beyond a reasonable doubt that you were guilty?
10:23 25 Do you understand that?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: And do you also understand that the jury
3 would be told that you had a right not to testify or put on any
4 evidence and they would be told that if you decided not to
5 testify or put on any evidence, they could not hold that
6 against you as some indication or evidence that you were
7 guilty? Do you understand that?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: And do you further understand that the
10 jury would be told that they could not expect you to testify,
11 they could not expect you to put on any evidence, they could
12 not expect you to explain yourself or prove your own innocence?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: Do you further understand that by entering
15 a plea of guilty, if that plea is accepted by the Court, there
16 will be no trial and you will have waived or given up your
17 right to a trial as well as all the other rights associated
18 with a trial that I have just outlined for you?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: Mr. Austin, do you waive the reading of
21 the indictment?

22 MR. AUSTIN: Yes, Your Honor.

23 THE COURT: I want to go over with you now the
24 essential elements of the crime you are pleading guilty to. By
25 essential elements, I mean what it is the government would have

1 to prove to a jury beyond a reasonable doubt before the jury
2 could find you guilty. Do you understand that?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: The essential elements of Count One,
5 mailing threatening communications to a United States judge,
6 are as follows: First, that you knowingly caused to be
7 delivered in the mail for delivery by the postal service a
8 communication containing a threat as charged. Second, that the
9 nature of the threat was to injure any person. And, third,
10 that the communication was addressed to a United States judge.

11 Do you understand that those are the essential
12 elements of the crime to which you are pleading guilty this
13 morning?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: Ms. Basile, could you tell us what it is
16 the government is prepared to prove if we went to trial?

17 MS. BASILE: Yes, Your Honor. If this case were to
18 proceed to trial, the government would be prepared to prove the
19 following: George Yarbrough, a TDCJ inmate currently serving a
20 state sentence, wrote a letter threatening to kill U.S.
21 District Judge David Hittner. It was received by the U.S.
22 District Clerk's Office in Houston on April 19th, 2017.
23 Yarbrough's letter states in part, quote: So the state of
24 Texas and the federal government are to blame for me killing
25 you and your family, end quote.

1 The letter also states, quote: Every day I look
2 at your photo that I got off the Internet and I think of many
3 ways to kill you and your family.

4 Yarbrough previously wrote a similar letter in
5 2014 and was prosecuted for the same crime in the Southern
6 District of Texas and sentenced by United States District Court
7 Judge Nancy Atlas to serve a 21-month sentence. He has still
8 not started serving that sentence as he was finishing the state
9 sentence. The basis for selecting Judge Hittner seems to be
10 because several years earlier Judge Hittner dismissed a civil
11 rights lawsuit that Yarbrough filed against TDCJ personnel.

12 FBI agents conducted a recorded interview of
13 George Yarbrough on June 28, 2017 where Yarbrough is
14 imprisoned. Yarbrough admitted to writing the current letter
15 for which he is indicted and expressed his concern that he is
16 not being taken seriously as the sentence Judge Atlas gave him
17 was so short and referred to it as a, quote, slap on the wrist,
18 end quote.

19 During the interview, he again threatened Judge
20 Hittner and also threatened to harm Senator Whitmire and the
21 two prison guards he attempted to get civil relief from
22 originally with Judge Hittner.

23 When Yarbrough was interviewed in 2014, he said
24 that he was going to murder Judge Hittner when he is released
25 from TDCJ and blamed Judge Hittner for all of his problems.

1 Yarbrough also said he is going to murder a judge
2 in San Antonio who took his daughter away. Yarbrough stated
3 that he had people on the outside that would murder Judge
4 Hittner if something happened to him before he got out.

5 THE COURT: Mr. Yarbrough, can you tell me in your own
6 words what it is you did to commit the crime that you are
7 pleading guilty to this morning?

8 THE DEFENDANT: I just mailed a letter threatening a
9 judge.

10 THE COURT: Judge Hittner?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: George Yarbrough, how do you plead to
13 Count One of the indictment? Guilty or not guilty?

14 THE DEFENDANT: Guilty.

15 THE COURT: It is the finding of the case in United
16 States versus George Yarbrough that the defendant is fully
17 competent and capable of entering an informed plea; that the
18 defendant is aware of the nature of the charges and the
19 consequences of the plea; and that the plea of guilty is a
20 knowing and voluntary plea supported by an independent basis in
21 fact, containing each of the essential elements of the offense.
22 The defendant is now adjudged guilty of that offense.

23 Mr. Yarbrough, as I told you, a presentence
24 report will be prepared to assist me in sentencing. You will
25 be asked to give information for that report, and Mr. Austin,

1 your attorney, may be with you when you are interviewed by the
2 probation officer.

3 By December 8, 2017, the initial presentence
4 report will be disclosed to counsel. By December 22, 2017,
5 counsel shall file either objections in writing to the facts of
6 the offense and application of the sentencing guidelines or a
7 statement that there is no objection. By January 5th, 2018,
8 the probation officer shall submit to the judge the final
9 presentence report with an addendum addressing any contested
10 issues. Sentencing is set for January 19, 2018, at 10:00 a.m.

11 Is there anything else?

12 MS. BASILE: Nothing from the government.

13 THE COURT: You may be excused.

14 MR. AUSTIN: Thank you, Your Honor.

15 *(Court adjourned at 10:29 a.m.)*

16 * * * *

17 I certify that the foregoing is a correct transcript from
18 the record of proceedings in the above-entitled cause.

19
20 Date: April 18, 2018

21 */s/ Mayra Malone*

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23 Mayra Malone, CSR, RMR, CRR
24 Official Court Reporter
25

Mayra Malone, CSR, RMR, CRR